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Attorneys for Plaintiff JULIA SHIH

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

JULIA SHIH,

Plaintiff,

vs.

BMW OF NORTH AMERICA, LLC,  
 and DOE 1 through DOE 10 inclusive,

Defendants,

Case No. **CV 10-05852 HRL**

COMPLAINT FOR VIOLATION OF  
 THE SONG-BEVERLY CONSUMER  
 WARRANTY ACT

PLAINTIFF DEMAND TRIAL BY  
 JURY

Plaintiff alleges:

## I.

## JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1332.
2. Plaintiff JULIA SHIH (hereinafter "Plaintiff") is, and at all times mentioned herein was, a competent adult.
3. Plaintiff at all times mentioned herein was a citizen and resident of California.
4. Plaintiff is informed and believes and thereupon alleges that defendant BMW OF NORTH AMERICA, LLC is a corporation incorporated under the laws of Delaware and having it's principal place of business in New Jersey, and is licensed

BY FAX

1 to do business in California.

2 **II.**

3 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**

4 5. Defendants DOE 1 through DOE 10 inclusive are sued herein. DOE 1  
5 through DOE 10 are each independently, or as a representative of another defendant  
6 in this suit, responsible in some manner for the causes of action set forth herein and  
7 the damages sustained by Plaintiff.

8 6. Plaintiff purchased the subject 2007 BMW 328i, VIN:  
9 WBAVA33557KX82318 ("the subject vehicle") on or about August 30, 2007 from  
10 Pacific BMW in Glendale, California. The subject vehicle is a new motor vehicle that  
11 was bought primarily for personal, family, or household purposes or it is a new motor  
12 vehicle with a gross vehicle weight under 10,000 pounds that was bought or used  
13 primarily for business purposes by an entity to which not more than five motor  
14 vehicles are registered in this state. The subject vehicle is a "new motor vehicle"  
15 under the Song-Beverly Consumer Warranty Act, Civil Code §§1790 et seq ("the  
16 Act").

17 7. Pacific BMW is engaged in the business of distributing or selling  
18 consumer goods at retail. Plaintiff is a "buyer" under the Act.

19 8. BMW OF NORTH AMERICA, LLC manufactures, assembles, or  
20 produces consumer goods. BMW OF NORTH AMERICA, LLC is a "manufacturer"  
21 under the Act.

22 9. BMW OF NORTH AMERICA, LLC issued an "express warranty" to  
23 Plaintiffs in which, *inter alia*, BMW OF NORTH AMERICA, LLC undertook to  
24 preserve or maintain the utility or performance of the subject vehicle. Said warranty  
25 was an integral factor in Plaintiffs' decision to purchase the subject vehicle.

26 10. The subject vehicle has suffered from nonconformity(s) to warranty,  
27 including, but not limited to, defect(s) which have manifested in: (a) recurrent engine  
28 malfunctions, loss of power on acceleration, failure to start, loss of power; and (b)

1 global electrical problems, recurrent malfunction of the power door locking, failure  
2 to start, activation of the headlight malfunction indicator light, activation of the  
3 service engine soon light, activation of the tire pressure warning light, malfunction  
4 of the power side mirror system. Said nonconformity(s) have substantially impaired  
5 the vehicle's use, value, or safety to Plaintiff.

6 11. Plaintiff has delivered the vehicle to BMW OF NORTH AMERICA,  
7 LLC or its authorized repair facility(s) for repair of said nonconformity(s). BMW OF  
8 NORTH AMERICA, LLC or its authorized repair facility(s) have failed to service or  
9 repair the subject vehicle to warranty after a reasonable number of attempts.

10 12. The subject vehicle was not fit for the ordinary purposes for which such  
11 goods are used and was not of the same quality as those generally acceptable in the  
12 trade. BMW OF NORTH AMERICA, LLC breached the implied warranty of  
13 merchantability and implied warranty of fitness. Plaintiff is entitled to revoke  
14 acceptance of the subject vehicle under the Act.

15 13. BMW OF NORTH AMERICA, LLC has not replaced the vehicle or  
16 otherwise made restitution to Plaintiff pursuant to its obligations under the Act.

17 14. Plaintiff is informed and believes and thereupon alleges that BMW OF  
18 NORTH AMERICA, LLC's refusal to replace the vehicle or make restitution to  
19 Plaintiff was wilful and not the result of a good faith and reasonable belief that the  
20 facts imposing said statutory obligation were absent.

21 15. Pursuant to the Act, Plaintiff is entitled to restitution in an amount equal  
22 to the actual price paid or payable by Plaintiff and collateral charges such as sales tax,  
23 license fees, registration fees, and other official fees less an amount directly  
24 attributable to use by Plaintiff prior to the time Plaintiff first delivered the vehicle for  
25 repair.

26 16. Plaintiff is entitled to recover incidental, consequential, and general  
27 damages, including, but not limited to, reasonable repair, towing, and rental car costs  
28 actually incurred by Plaintiff.

1        17. Plaintiff is entitled to recover a civil penalty up to two times the amount  
2 of actual damages for BMW OF NORTH AMERICA, LLC's wilful refusal to comply  
3 with its statutory obligations under the Act.

4        18. Plaintiff is entitled to recover a sum equal to the aggregate amount of  
5 costs and expenses including attorney's fees based on actual time expended and  
6 reasonably incurred in connection with the commencement and prosecution of this  
7 action.

8        WHEREFORE, Plaintiff prays judgment against BMW OF NORTH  
9 AMERICA, LLC as follows:

10        1. For actual damages, including collateral charges, and incidental,  
11 consequential, and general damages. To date, such damages include, but are not  
12 limited to Plaintiff's cash purchase price (\$44,974.89), rental car expense (\$55.29),  
13 and, in amounts according to proof, vehicle registration, expenses inadvertently  
14 omitted herein, and other future expenses reasonably incurred by Plaintiff in  
15 connection with this action; and

16        2. For a civil penalty up to two times the amount of actual damages; and

17        3. For rescission of the contract and restitution of consideration; and

18        4. For interest on said sum from date of rescission to date of judgment  
19 herein; and

20        5. For attorney's fees based on actual time expended and reasonably  
21 incurred in connection with the commencement and prosecution of this action; and

22        6. For costs of suit incurred in connection with the commencement and  
23 prosecution of this action; and

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1           7.     For such other and further relief as the court deems proper.

2           WHEREFORE, Plaintiff demands trial by jury.

3     DATED: December 14, 2010

THE BICKEL LAW FIRM, INC.  
Attorneys for Plaintiff

By: 

BRIAN K. CLINE